APPEAL NO. 010488

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 6, 2001. The hearing officer held that the appellant (claimant) did not sustain a compensable injury to his lumbar spine on __________, and furthermore that he did not give notice to his employer of the alleged injury within 30 days of that injury and had no good cause. Although he was unable to work because of his condition, there was no "disability" as defined in the 1989 Act.

The claimant appeals and states that the evidence favored his claim and shows good cause for a late reporting. The respondent (carrier) argues in favor of affirmance.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that there was no injury sustained on the job on __________. The claimant had back surgery for a non-work-related condition, in April 2000, and testified both that he had pain when he lifted a ladder on __________, and that he also thought he was having problems related to his surgery. The claimant said he realized he had a new injury on ________, when Dr. H reviewed his objective test results. Conflicting evidence was offered as to the amount of medical treatment received between the alleged date of injury and seeing Dr. H, and the claimant's attribution of his back problems to an __________, incident was somewhat retrospective.

The hearing officer did not err by finding no good cause for delayed reporting of the injury. While different inferences could certainly be drawn on this matter, due to the claimant's sincere misunderstanding of the cause of his back pain, it appears that there was a gap in seeking medical evaluation and the hearing officer could conclude that a reasonably prudent person would have acted sooner. The supervisor for the company, (Ms. S) testified that the claimant told her of his injury on August 12, but also that he attributed it to his April surgery. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.- Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.).

An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170

(Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). While different inferences could be drawn, the decision is not against the "great weight" of the evidence and we affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge